



[BILLING CODE 3290-F2]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WT/DS440/1]

WTO Dispute Settlement Proceeding Regarding China – Anti-Dumping and Countervailing Duties on Certain Automobiles from The United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on July 9, 2012, the United States requested consultations with the Government of the People’s Republic of China (“China”) under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) concerning China’s antidumping and countervailing duty measures on certain automobiles from the United States. That request may be found at www.wto.org, contained in a document designated as WT/DS440/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 31, 2012 to assure timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically at www.regulations.gov, docket number USTR-2012-0016. If you are unable to provide submissions at www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Dan Stirk, Associate General Counsel, Office of the United States Trade Representative, (202) 395-3150; and Joseph Rieras, Assistant General Counsel, Office of the United States Trade Representative, (202) 395-3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such a panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On July 9, 2012, the United States requested consultations concerning China’s antidumping and countervailing duty measures on certain automobiles from the United States. In November 2009, China initiated antidumping and countervailing duty investigations on exports of certain automobiles from the United States. In December 2011, China imposed antidumping and countervailing duties on those products.

In the course of its antidumping and countervailing investigations concerning certain automobiles from the United States, and in imposing duties on those products, China appears to have acted inconsistently with its obligations under the *General Agreement on Tariffs and Trade* (“GATT 1994”), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (“AD Agreement”), and the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”). China’s actions which appear to be inconsistent with its obligations include initiation of an investigation without sufficient evidence, failure to disclose essential facts underlying its conclusions, failure to adequately explain its findings and conclusions in sufficient detail, failure to provide non-confidential summaries of submissions, failure to objectively examine the evidence, failure to make determinations based on positive evidence, and failure to disclose calculations and data used to reach its conclusions.

Specifically, the United States asserts in the request for consultations that China’s antidumping and countervailing duty measures on certain automobiles from the United States appear to be inconsistent with the following provisions of the GATT 1994, the AD Agreement, and the SCM Agreement:

1. Articles 5.3 and 5.4 of the AD Agreement, and Articles 11.3 and 11.4 of the SCM Agreement, because: (a) China failed to examine the degree of support for, or opposition to, the application expressed by domestic producers of the like product prior to initiating the antidumping and countervailing duty investigations; (b) China initiated the investigations when domestic producers supporting the application accounted for less than 25 per cent of total production of the like product produced by the domestic industry; and (c) China failed to examine or review the accuracy and adequacy of the evidence provided in the application.

2. Article 11.3 of the SCM Agreement because the application for a countervailing duty investigation failed to contain information reasonably available to the applicant and therefore there was insufficient evidence in the application to justify the initiation of a countervailing duty investigation with respect to several programs.
3. Article 6.5.1 of the AD Agreement and Article 12.4.1 of the SCM Agreement because China failed to require the applicant to provide adequate non-confidential summaries of allegedly confidential information.
4. Article 6.9 of the AD Agreement because China failed to adequately disclose the calculations and data used to establish the antidumping duty rates it determined.
5. Articles 12.2 and 12.2.2 of the AD Agreement because China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material, and the reasons for the acceptance or rejection of relevant arguments or claims.
6. Article 6.8, including Annex II, paragraph 1, and Articles 6.9, 12.2, and 12.2.2 of the AD Agreement and Articles 12.7, 12.8, 22.3, and 22.5 of the SCM Agreement because:
(a) China improperly based its determination of the “all others” antidumping and countervailing duty rates on the facts available; (b) China failed to disclose the essential facts underlying its “all others” rate determinations; (c) China failed to set forth in

sufficient detail the findings and conclusions reached on all issues of fact and law it considered material in its “all others” rate determinations; and (d) with respect to the “all others” rates, China failed to make available all relevant information on the matters of fact and law and reasons which have led to the imposition of the final measures.

7. Articles 3.1 and 4.1 of the AD Agreement and Articles 15.1 and 16.1 of the SCM Agreement because China made a determination of injury using an improper definition of the domestic industry and as a result failed to base its determination on positive evidence and conduct an objective examination of the facts with respect to the domestic industry producing the subject imports.
8. Articles 3.1 and 3.2 of the AD Agreement and Articles 15.1 and 15.2 of the SCM Agreement because China's analysis of the effects of imports under investigation on the price of the like product was not based upon an objective examination of the record and positive evidence.
9. Articles 3.1, 3.4, and 3.5 of the AD Agreement and Articles 15.1, 15.4, and 15.5 of the SCM Agreement because: (a) China's analysis of the alleged causal link was not based upon an objective examination of the record and positive evidence, including an examination of all relevant economic factors and indices having a bearing on the state of the industry, an examination of all relevant evidence before the authorities, or an examination of any known factors other than allegedly dumped and subsidized imports which at the same time were injuring the domestic industry, and (b) China failed to meet

the requirement that injuries caused by other factors must not be attributed to the allegedly dumped and subsidized imports.

10. Article 6.2 of the AD Agreement because China failed to grant interested parties a full opportunity for the defense of their interests.
11. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.
12. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.
13. Article VI of the GATT 1994 as a consequence of the breaches of the AD and SCM Agreements described above.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov, docket number USTR-2012-0016. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2012-0016 on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment” (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page).

The www.regulations.gov website allows users to provide comments by filling in a “Type Comments” field, or by attaching a document using an “Upload File” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information, contained in a comment that he submitted, be treated as confidential business information must certify that such information is business confidential and

would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted at www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter --

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted at www.regulations.gov. The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2012-0016, accessible to the public at www.regulations.gov.

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at www.ustr.gov: the United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization at www.wto.org. Comments open to public inspection may be viewed at www.regulations.gov.

Bradford L. Ward,

Assistant United States Trade Representative

for Monitoring and Enforcement

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